

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN CHRIST, aka John J. Forbes,

Defendant - Appellant.

No. 04-30242

D.C. No. CR-03-00204-TSZ

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

John Christ appeals the 51-month sentence and \$7,500 fine imposed following his guilty-plea conviction for mailing threatening communications, in

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 18 U.S.C. § 876(c). We have jurisdiction under 28 U.S.C. § 1291, and we affirm in part and remand in part.

Christ contends that the district court erred by imposing a \$7,500 fine as part of his sentence. This contention lacks merit because the record reflects that Christ did not meet his burden of demonstrating an inability to pay the fine. *See* U.S.S.G. § 5E1.2(a); *United States v. Robinson*, 20 F.3d 1030, 1032-33 (9th Cir. 1994) (placing burden on defendant to prove inability to pay by a preponderance of the evidence).

Although we affirm the district court's imposition of a fine, we remand the remainder of the sentence for further proceedings consistent with *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc).

AFFIRMED in part; REMANDED in part.